

Approved Meeting Minutes

July 27, 2023

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on July 27, 2023, in the Afton Room at the Department of Corrections, 1450 Energy Park Drive, Saint Paul, MN 55108; and by telephone and/or electronically.

Present in person were Chair Kelly Lyn Mitchell and Commission members Judge David Knutson, Judge Michelle A. Larkin, Cathryn Middlebrook, Justice Gordon L. Moore, III, Brooke Morath, and Commissioner of Corrections Paul Schnell. MSGC Executive Director Nate Reitz and staff member Jill Payne were also present in person. No members of the public were present in person.

Commissioners Kyra Ladd and Officer Mohamoud Ibrahim were present electronically, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on June 20, 2023. Also present by telephone and/or electronically were MSGC staff members Kathleen Madland and Linda McBrayer; and approximately eight members of the public including Ben Johnson; Dana Ferguson, Minnesota Public Radio; Elizabeth Ruhland; Esme Murphy, WCCO-TV; Gina K., Matt Majovski; Angela Cook; and Nicholas Murch.

1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:00 p.m.

Director Reitz called the roll. Present were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Nine members were present, one member was absent, and one seat was vacant. A quorum was present.

2. Approval of Draft Meeting Agenda (Action)

This was on the agenda as an action item.

Motion by Commissioner Schnell and second by Commissioner Middlebrook to approve the meeting agenda.

Motion carried unanimously on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

3. Approval of Draft Meeting Minutes from June 7, 2023 (Action)

This was on the agenda as an action item.

Motion by Commissioner Middlebrook and second by Commissioner Larkin to approve the June 7, 2023, draft meeting minutes.

Motion carried unanimously on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

4. Review of Public Hearing Record (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who reviewed the public hearing record, as follows:

- On Tuesday, June 20, 2023, the notice of public hearing was published in the State Register (Volume 47, No. 51) and the contents of the proposed modifications were posted on the Commission’s website. The following day, an e-mail notice of public hearing was sent to persons who have signed up on the Commission’s website to receive informational e-mails. No one was notified by United States mail because there are no longer members of the public on the United States mailing list.
- In early July, MSGC staff identified an error in the contents of the proposed modifications, whereby the proposed ranking for Burglary 3rd Degree (Shoplifting Contrary to Trespass Notice) was implemented inconsistently with the proposed ranking as adopted by the Commission and published in the State Register. On July 7, a corrected notice of public hearing, with corrected proposed modifications, was posted on the Commission’s website, and a link was sent to persons who have signed up on the Commission’s website to receive informational e-mails.
- Pursuant to the public hearing notice, the public hearing was held on July 20, 2023, in the Minnesota State Capitol, Room G3, and by telephone and/or electronically. Seven members of the public wished to, and did, testify. After the public hearing, the record remained open for five calendar days, through July 25, to accept written comments. From the beginning of the public hearing notice period through the end of the public comment period, the Commission received approximately 2,047 written comments regarding the subject of the public hearing. The complete public hearing record—including a list of those who spoke at the hearing, a link to the video and audio of the hearing, and copies of the written comments—was provided to all Commission members between July 18 and July 26, 2023, was posted in its entirety on the Commission’s web site this morning and is included in today’s meeting materials.

Director Reitz said that the Commission appeared to have substantially complied with all public notice and hearing requirements to permit it to take final action on the proposed modifications today.

5. Accept or Reject Proposed Amendments to the Guidelines and Commentary (Action)

This was on the agenda as an action item.

Chair Mitchell said that the plan for voting on the proposed modifications was to set aside items A.2 (felony redefinition), A.8 (carjacking), and A.10 (labor trafficking) of the public hearing notice, and to vote separately on the remaining items in parts A and B.

Chair Mitchell asked if there were any other items that the Commission would like to set aside. Hearing none, Chair Mitchell entertained a motion to finally adopt the proposed modifications related to the 2023 Regular Session Laws, other than items A.2, A.8, and A.10.

Motion by Commissioner Knutson and second by Commissioner Schnell to finally adopt all items proposed in the public hearing notice, as corrected on July 7, 2023, with the exceptions of the items listed in part A as modifications 2, 8, and 10.

Motion carried unanimously on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

Next, the Commission discussed item A.2 (felony redefinition) of the public hearing notice.

Chair Mitchell introduced the item and called on Director Reitz who presented staff paper (5A2), “Year and a Day as an Aggravated Durational Departure,” dated July 21, 2023. Director Reitz further explained that the Commission received a public comment (4E3) from State Court Administrator Jeffrey Shorba, who described an issue with the State Courts’ case management system following the legislative change to the maximum penalty for a gross misdemeanor, and because the case management system still calculates a sentence of 365 days as a gross misdemeanor, the Judicial Branch has asked judges not to impose 365-day sentences until the issue can be fixed. In the letter, Mr. Shorba “respectfully requests that the Commission not consider a sentence of a year and a day to be a departure in any case where the guidelines call for a sentence of 12 months.”

Director Reitz said that, in light of this, staff suggested further amending Guidelines section 2.C.1 to provide that, when the Guidelines presume a sentence of 12 months, a sentence of one year and one day is not an aggravated dispositional departure.

Next, the Commission discussed additional changes to Comment 2.B.502 in light of Matt Majovski’s public hearing testimony identifying an inconsistency between the comment and the proposed revisions to Guidelines 2.B.5.b. Director Reitz presented staff paper (5A3), “Changing Comment 2.B.502.”

The Commission discussed the issue at length and refined the language of Comment 2.B.502 as a group, after which Chair Mitchell entertained a motion.

Motion by Commissioner Schnell and second by Commissioner Knutson to adopt to finally adopt the item proposed as modification 2 in part A of the public hearing notice, as corrected on July 7,

2023, except to substitute the following modifications to Guidelines Comment 2.B.502 and section 2.C.1:

2. Determining Presumptive Sentences

* * *

Comment

* * *

2.B.502. *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history score. No uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor" exists. Therefore, the Commission recognizes that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined by current Minnesota offense definitions and sentencing policies, except as provided in section 2.B.7. However, with respect to out-of-state offenses, the Commission chose not to apply Minnesota's 2023 redefinition of "felony," which now defines a felony as including a 365-day sentence. This is consistent with the Commission's policy before 2023 and with Minn. Stat. § 609.0342(b)'s treatment of pre-2023 365-day sentences as gross misdemeanor sentences. For example, an assault with a dangerous weapon committed in Texas that received a 365-day sentence would be given one gross misdemeanor unit due to the sentence length despite being the equivalent by definition of a Minnesota felony second-degree assault.*

* * *

C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender's criminal history score is computed according to section 2.B above.
 - a. Presumptive Disposition. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas,

the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence. Section 3.A governs conditions of stayed sentences.

- b. Presumptive Duration. Each cell on the Grids provides a fixed sentence duration. If a cell, or other Guidelines policy, provides a fixed sentence duration of 12 months, a sentence duration of one year and one day is permissible without departure. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence except as provided in section 2.C.3.c(1). The shaded areas of the grids do not display ranges. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year ~~and one day~~, and the maximum sentence is not more than the statutory maximum.

Motion carried unanimously on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

Next, the Commission discussed item A.8 (carjacking) of the public hearing notice.

Chair Mitchell called on Commissioner Larkin who made a motion.

Motion by Commissioner Larkin and second by Commissioner Knutson to finally adopt the item proposed as modification 8 in part A of the public hearing notice, as corrected on July 7, 2023, except to rank carjacking in the first, second, and third degrees at severity level (SL) 9, SL 7, and SL 6, respectively.

Commissioner Larkin gave her rationale for ranking the offense of carjacking higher than robbery, and a lengthy discussion followed.

Motion carried on a 7–2 roll-call vote.

Voting “Yes” were commissioners Ibrahim, Knutson, Ladd, Larkin, Moore, Morath, and Schnell.

Voting “No” were Chair Mitchell and Commissioner Middlebrook.

Next, the Commission discussed item A.10 (labor trafficking) of the public hearing notice.

Chair Mitchell reminded the Commission of the testimony provided by the Advocates for Human Rights during the public hearing and that their concerns for how the proposal would affect lower-level operatives; therefore, cautioned against penalties beyond the initial MSGC staff recommendations.

Motion by Commissioner Middlebrook and second by Commissioner Schnell to finally adopt the item proposed as modification 10 in part A of the public hearing notice, as corrected on July 7, 2023, except to rank Labor Trafficking (Death) at SL 9; to rank Labor Trafficking (Great Bodily Harm) at SL 8; and to list all forms of Labor Trafficking except the SL 6 and SL 7 offenses in section 8.

The Commission discussed the motion and Commissioner Middlebrook explained her rationale.

Motion carried on a 5–4 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Knutson, Middlebrook, Morath, and Schnell.

Voting “No” were commissioners Ibrahim, Ladd, Larkin, and Moore.

6. Cannabis Threshold Tables (Action)

Chair Mitchell called on Director Reitz who presented a draft Appendix 5, consistent with the Commissioner’s interest in appending cannabis threshold tables to the Guidelines as a reference for practitioners. Commissioner Moore noted that the appendix, although clearly not authoritative, would be a helpful reference.

Motion by Commissioner Moore and second by Commissioner Larkin to add Appendix 5, Cannabis Threshold Tables, to the Guidelines as follows:

Appendix 5. Cannabis Threshold Tables

The tables in this appendix summarize Minnesota Statutes chapter 152’s quantity thresholds for cannabis-related possession, cultivation, and sale offenses. Refer to chapter 152 for authoritative offense descriptions, and to chapter 342 for circumstances under which cannabis-related acts may be licensed or subject to administrative fines.

A. Cannabis Possession and Cultivation

The following table summarizes cannabis thresholds for chapter 152’s unlawful possession and cultivation offenses. Offenses in other chapters, such as Minn. Stat. § 169A.36 (Open Package Law), are outside the scope of this table.

“THC” refers to tetrahydrocannabinol. Other terms are statutorily defined.

Offense (Severity Level)	Cannabis Flower Possessed in Residence	Cannabis Flower Possessed Elsewhere	Cannabis Concentrate Possessed	THC Infused in Edible Cannabis Products, Lower-Potency Hemp Edibles, or Hemp-Derived Consumer Products Possessed	Unharvested Cannabis Plants Growing
Controlled Substance Crime 1st Degree (D8)	≥ 50 kg	≥ 50 kg	≥ 10 kg	> 1 kg	--
Controlled Substance Crime 2nd Degree (D7)	< 50 kg and ≥ 25 kg	< 50 kg and ≥ 25 kg	< 10 kg and ≥ 5 kg	≤ 1 kg and > 500 g	--
Controlled Substance Crime 3rd Degree (D6)	< 25 kg and > 10 kg	< 25 kg and > 10 kg	< 5 kg and > 2 kg	≤ 500 g and > 200 g	--
Cannabis Possession or Cultivation 1st Degree (D2)	≤ 10 kg and > 2 lb.	≤ 10 kg and > 2 lb.	≤ 2 kg and > 160 g	≤ 200 g and > 16 g	> 23 plants
Cannabis Possession or Cultivation 2nd Degree (gross misdemeanor)	--	≤ 2 lb. and > 1 lb.	≤ 160 g and > 80 g	≤ 16 g and > 8 g	≤ 23 plants and > 16 plants
Cannabis Possession 3rd Degree (misdemeanor)	--	≤ 1 lb. and > 4 oz.	≤ 80 g and > 16 g	≤ 8 g and > 1.6 g	--
Cannabis Possession 4th Degree (petty misdemeanor)	--	≤ 4 oz. and > 2 oz.	≤ 16 g and > 8 g	≤ 1.6 g and > 0.8 g	--
Not a chapter 152 offense	≤ 2 lb.	≤ 2 oz.	≤ 8 g	≤ 0.8 g	≤ 16 plants

B. Cannabis Sale

The following table summarizes cannabis thresholds for chapter 152’s unlawful sale offenses. Cannabis sale offenses have only one quantity threshold, which the following table refers to as the “criminal sale threshold”:

- 2 ounces of cannabis flower,
- 8 grams of cannabis concentrate, or
- 0.8 grams (800 mg) of tetrahydrocannabinol infused in edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products.

The following table applies only to sales by adults. Sales by minors are governed by Sale of Cannabis by a Minor, which has elements and penalties like those of Cannabis Sale 3rd Degree and 4th Degree.

Depending on the cannabis form and amount, the penalty for possession, shown in the preceding table, may be greater than the penalty for sale, shown in the following table, in which case the greater penalty for possession may apply to the sale.

Offense (Severity Level)	Sale of
Cannabis Sale 1st Degree (D2)	More than the criminal sale threshold— <ul style="list-style-type: none"> • To a minor by an adult more than 36 months older; • Within 10 years of two or more convictions for Cannabis Sale 2nd or 3rd Degree; or • Within 10 years of a conviction for Cannabis Sale 1st Degree
Cannabis Sale 2nd Degree (gross misdemeanor)	More than the criminal sale threshold— <ul style="list-style-type: none"> • In a school zone, park zone, or drug treatment facility; or • Within 10 years of a conviction for Cannabis Sale 1st, 2nd, or 3rd Degree; or Any amount to a minor
Cannabis Sale 3rd Degree (misdemeanor)	More than the criminal sale threshold

Offense (Severity Level)	Sale of
Cannabis Sale 4th Degree (petty misdemeanor)	Not more than the criminal sale threshold— <ul style="list-style-type: none"> • For remuneration; or • To or by someone under age 21
Not a chapter 152 offense	Not more than criminal sale threshold, for no remuneration, between people age 21 or older

Motion carried unanimously on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

7. Other 2023 Regular Session Laws of Interest to the Commission (Discussion)

Chair Mitchell called on Director Reitz who presented staff paper (7), “Other Laws of Interest to the Commission,” dated June 5, 2023, and highlighted some of its items including funding for phase 1 of the Commission’s comprehensive review; changes to the felony murder law; amendments to the Commission’s membership; an amendment to the clemency process; changes to fentanyl quantity thresholds; and the decriminalization of drug paraphernalia.

8. 2024 Draft Meeting Calendar (Action)

Chair Mitchell called on Director Reitz who presented the draft 2024 Meeting Calendar, for the Commission’s consideration noting that Commissioner Knutson had indicated at least one conflict.

Motion by Commissioner Knutson and second by Commissioner Larkin to adopt the 2024 Meeting Calendar as presented, except to change the March meeting date to March 14 instead of March 7.

Motion carried unanimously on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

9. Preview of Guidelines Comprehensive Review (Discussion)

Chair Mitchell called on Director Reitz who said that he and Chair Mitchell had met with the Department of Administration’s Management Analysis Division (MAD) to discuss the process. Director Reitz said that the next step was for MAD to write a proposal based on the budget and to assemble a team. Director Reitz expects that MAD will present at the Commission’s next meeting its plan for stakeholder engagement.

10. Executive Director's Report (Discussion)

This was on the agenda as a discussion item.

Director Reitz reported on the following items:

- The 2023 edition of the Sentencing Guidelines will be published next week. Director Reitz explained that staff recently identified a technical error in the proposed changes that were submitted to the Legislature in January, an incorrect statutory citation for sex trafficking, saying that staff will correct this error when publishing the change in next week's edition of the Sentencing Guidelines.
- The National Association of Sentencing Commission's annual conference in August will be hosted by the Nevada Sentencing Commission.
- Director Reitz will be presenting this year's Sentencing Guidelines changes to a breakout session at this year's Criminal Justice Institute in August.
- It is anticipated that the Governor will be appointing the new Commission in August.
- The next Commission meeting will be September 7, in the Afton Room (this room).
- The research department is extremely short-staffed with the retirement of Anne Wall.
- The new research supervisor posting closes August 10, 2023.

Commissioner Schnell announced that this will be his last meeting and that Chair Mitchell, who has been named Assistant Commissioner of Community Services and Reentry, will be his designee.

11. Public Input

Chair Mitchell asked if there were members of the public who wished to speak. Two members of the public participating remotely indicated that they wished to speak.

Matt Majovski, a probation officer from Dakota County, speaking on his own behalf, thanked the Commission for addressing his public hearing comment regarding out-of-state felonies. Mr. Majovski said, too, that he appreciated the new cannabis tables that will be added as an appendix in the Guidelines, and he appreciated the opportunity to participate in the meetings remotely.

At this time, due to technical difficulties with the WebEx connection, participants in the Afton Room could not hear remote participants. This continued for approximately one minute. The issue was temporarily corrected, and Mr. Majovski repeated the portion of his comments in which in-person participants did not hear.

The second member of the public indicating an interest in speaking, Elizabeth Ruhland, had left the meeting before being called on. Director Reitz apologized in the event that the technical difficulties contributed to this person's early departure from the meeting.

12. Adjournment

Chair Mitchell adjourned the meeting at 3:33 p.m., without objection.